

Whether a State of special government... whether the Court of Jamaica has power to... Order 29 Rule 9 UK. How... will likely that decision of... Appeal for leave to... refused.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 79 OF 1988

2) Any... vs... (1988) A.C. 776

**BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.**

*SCA 10/89
SCA 17/89
SCA 21/89*

BETWEEN	JAMCULTURE LIMITED	PLAINTIFF/APPELLANT
A N D	BLACK RIVER UPPER MORASS DEVELOPMENT COMPANY LTD.	1ST DEFENDANT/RESPONDENT
A N D	AGRICULTURAL DEVELOPMENT CORPORATION	2ND DEFENDANT/RESPONDENT
A N D	NATIONAL INVESTMENT BANK OF JAMAICA LTD.	3RD DEFENDANT/RESPONDENT

**Mr. Enos Grant for Appellant
Mr. Allan Wood for Respondents**

February 13, 1989

ROWE P.:

Jamculture Limited, the appellant herein, brought an action against Black River Upper Morass Development Company Limited, the Agricultural Development Corporation and the National Investment Bank of Jamaica Limited claiming damages and on the 18th of November, 1988 the appellant issued a summons for interim payment seeking an order that all the defendants or any one or two of them make an interim payment to the plaintiff/appellant on account of the damages claimed in the action.

Civil... Court

This application came before Reckord J. when the point was taken by the defendants/respondents that the Court in Jamaica has no jurisdiction to hear and to make an order for interim payment. Reckord J. thought that the Court had jurisdiction and from his order to that effect an appeal has been taken to this Court.

On the 19th of December, 1988 this Court allowed the appeal and in its written reasons for judgment held that to accept the position advocated by the appellant in this particular case would be an unwarranted and wholly unjustified interpretation of Section 686 of the Judicature (Civil Procedure Code) because it would then be creating substantive rights which do not otherwise exist at common law, in equity, or by any local legislative provision.

Section 686 of the Judicature (Civil Procedure Code) of Jamaica states:

"Where no other provision is expressly made by Law or by Rules of Court the procedure and practice for the time being of the Supreme Court of Judicature in England shall, so far as applicable be followed,"

Mr. Grant argued at the hearing of the substantive appeal that the provisions in Section 686 supra could be used to incorporate into the law and practice of the Supreme Court in Jamaica the provisions contained in Section 32(1) of the Supreme Court Act of the United Kingdom, and referred to in Order 29 Rule 9 of the Supreme Court Practice.

Mr. Grant in his notice of motion has said:

"That the matter is of great general or public importance in that all legal practitioners as well as all prospective litigants in Jamaica are directly affected by the decision;

"and that the matter involves the point of Law of whether, on the true and natural construction of the Judicature (Civil Procedure Code) Act, Sections 459 and 685, the procedure and practice of the Supreme Court of England as set out in Order 29, Part II of the 1988 Annual Practice is incorporated into the Laws of Jamaica."

This Court has a discretion in a matter which is not a final decision from the Court to determine whether or not there should be a further appeal in the interests of justice.

In my view the point is of some importance and one might even say it is one of great importance, but on reading the judgment of the Court of Appeal and on looking at the authority produced by Mr. Grant of Benjamin MacFoy vs. United Africa Company Limited [Judicial Decisions of the Privy Council from West Africa p. 866] and the authority of the Privy Council in Daily Telegraph Newspaper Company Limited vs. McLaughlin (1984) A.C. 776 produced by Mr. Wood, I am firmly of the opinion that the decision of the Court of Appeal is such, that it is unlikely that it will be reversed by the Privy Council on any further appeal, should this Court grant leave to appeal. It would be an act in futility to permit the appeal to go forward in circumstances where it appears that there is no reasonable prospect of success. For that reason, I am of the view the Court ought not to exercise its discretion to grant leave to appeal in this matter. I would refuse leave to appeal with costs to the respondents to be agreed or taxed.

FORTE J.A.:

I would refuse the application for leave to appeal to the Judicial Committee of the Privy Council for the same reasons advanced by the learned President.

DONNER J.A.:

I concur with the opinion of the learned President.